



Section 14A of the Income Tax Act, 1961 where no exempt income has been earned or shown by the assessee during the Assessment year 2009-10 and as such the Assessment order passed under section 143(3) is bad in law and may please be quashed.

2. That the Ld. CIT(A) has erred in facts and law while confirming the addition of Rs.17,36,661/- made by the Ld. Assessing Officer u/s 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 where no exempt income has been earned during the year under consideration. Thus, the addition so confirmed by the Ld. CIT (A) is bad in law and may please be deleted.

3. That the Ld. CIT(A) has erred in law in confirming the addition of Rs.17,36,661/- made by the Ld. Assessing Officer u/s 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 where the Ld. Assessing Officer has not recorded his dissatisfaction with the correctness of the claim of appellant that no expenditure has been claimed in relation to income not forming part of total income. Thus, the addition so confirmed by the Ld. (IT (A) is bad in law and may please be deleted.

4. That the Ld. CIT(A) has erred in law in confirming the addition of Rs.17,36,661/- made by the Ld. Assessing Officer u/s 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 where the alleged investment of Rs.3,04,00,000/- has not been made out of borrowed or interest bearing funds. Thus, the addition so confirmed by the Ld. CIT (A) is bad in law and may please be deleted.

5. That we crave to add; delete, modify or withdraw any of the above grounds at the time of hearing.”

2. Briefly stated the facts of this case are : assessee is into the business of construction of building who has filed return declaring income Rs.12,09,888/- which was subjected to scrutiny. From the audited balance sheet, it is noticed by the AO that assessee has shown investment of Rs.3,04,00,000/- and it was called upon to show cause as to why disallowance u/s 14A of the Income-tax Act, 1961 (for short ‘the Act’) read with Rule 8D of the Income-tax

Rules, 1962 (for short 'the Rules') be not made, to which assessee filed reply. Finding the reply filed by the assessee not tenable, AO invoked the provisions contained u/s 14A read with Rule 8D and calculated the expenditure for earning dividend income as under :-

“(i) The amount of expenditure directly relating to income which does not form part of total income – Nil.

(ii) In a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income of receipt an amount :

A X B/C	
A = Interest	Rs.20,14,787/-
B = Average of value of investment	Rs.3,13,50,000/-
C = Average of the total assets	Rs.3,99,79,186/-
Rs.20,14,787 x Rs.3,13,50,000 / Rs.3,99,79,186/- =	Rs.15,79,911/-

(iii) An amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income.

Half of average value of investment of 0.5% \*  
3,13,50,000 = Rs.1,56,750/-.

The amount of Rs.17,36,661/- is disallowed u/s 14A of the IT Act.”

AO assessed the total income at Rs.29,46,549/-.

3. Assessee carried the matter before the Id. CIT (A) who has affirmed the order by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Ld. AR for the assessee contended inter alia that during the year under assessment, assessee has neither received any exempted income nor claimed any exempted income in return of income and as such, provisions contained u/s 14A read with Rule 8D are not applicable; that before invoking the provisions of section 14A read with Rule 8D has not recorded his dis-satisfaction with reasons; that all the transactions have been routed through CC Account of the assessee while making investment out of the surplus funds and not out of the borrowed fund and relied upon the judgment in case cited as **Cheminvest Limited 378 ITR 33 (Del.)**;. However, on the other hand, Id. DR relied upon the order passed by Id. CIT (A).

6. In the backdrop of the facts and circumstances of the case and the contentions raised by the parties of the appeal, the sole question arises for determination in this case is :-

*“as to whether AO/CIT (A) have erred in making / confirming addition of Rs.17,36,661/- by invoking the provisions contained under section 14A read with Rule 8D?”*

7. Before invoking provisions contained under Rule 8D(2)(iii), the AO has not recorded his dis-satisfaction of the correctness of the claim of expenditure made by the assessee nor AO came to the conclusions that, “the claim of the assessee that no expenditure has been incurred” is incorrect. Assessee has come up with categorical plea that no exempt income has been earned during the year under assessment nor the assessee has incurred any expenses for managing the investments. From the books of account, AO has not identified any expenditure incurred by the assessee for earning any dividend income but proceeded to invoke the provisions contained under Rule 8D(2)(iii) merely on the basis of guesswork that too without recording his dis-satisfaction as to how the claim of the assessee that no expenditure has been incurred. Likewise, CIT (A) has also proceeded on the basis of guesswork in sustaining the addition.

8. Hon’ble jurisdictional High Court in judgment cited as **Cheminvest Ltd.** (supra) while examining the identical issue held that section 14A will not apply where there is no exempt income received or receivable during the year under assessment.

9. In the instant case, AO has merely made an addition on the ground that interest expenses of Rs.20,14,787/- is not directly attributable to any particular income or receipt and to maintain

such investment, administrative expenses are attributable to the same. However, assessee has come up with specific plea that investment in other companies of Rs.3,04,00,000/- compared to amount shown under same head of Rs.3,23,00,000/- in the last year and a sum of Rs.22,74,922.51 was shown as finance charges and same was accepted by the department but, in the year under assessment, Rs.20,14,787/- was shown as finance charges only. CIT (A) insisted upon producing the copy of bank account from which the assessee alleged to have made the investment but when the assessee has come up with categorical plea that he has made the investment after withdrawal from CC account the complete detail thereof was already with the revenue authorities, the CIT (A) was not empowered to reject the contention without calling report from AO or from the Bank itself or without verifying the facts that the investment has not been made from surplus funds. Rather the CIT (A) proceeded on the premise that, "*any income whether exempt or not, can only be earned after incurring some expenditure*", which is purely a guesswork on the basis of surmises and not permissible under law. More so, in the face of the fact that audited balance sheet and books of account have not been disputed by the revenue, the ground taken by the CIT (A) for affirming the order of the AO is not sustainable.

10. In view of what has been discussed above, addition made by AO to the tune of Rs.17,36,661/- and affirmed by the Id. CIT (A) is not sustainable in the eyes of law, hence hereby deleted. Consequently, appeal stands allowed.

**Order pronounced in open court on this 8<sup>th</sup> day of August, 2016.**

**Sd/-  
(J.S. REDDY)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 8<sup>th</sup> day of August, 2016  
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XVIII, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**